Supreme Court, U.S.
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In the
Supreme Court of the United States

MAYOR MARC H. MORIAL and
THE CITY OF NEW ORLEANS,
Petitioners,

v.

SMITH & WESSON CORP., et al.,
Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Louisiana

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Respondents respectfully submit this Corporate Disclosure Statement.

Respondent Sturm, Ruger & Company, Inc. is publicly traded on the NYSE and has no parent company or subsidiaries. No publicly held company owns 10% or more of the corporation's stock.

Respondent Glock, Inc. is a privately held corporation. No publicly held company owns 10% or more of the corporation's stock.

The parent corporation of Respondent Beretta U.S.A. Corp. is Beretta Holdings, S.p.A. No publicly held company owns 10% or more of the corporation's stock.

Respondent Smith & Wesson Corp. is a wholly-owned subsidiary of Saf-T-Hammer Corporation, which has publicly held securities.

The parent company of Respondent Taurus International Manufacturing, Inc. is Taurus Holdings, Inc. No publicly held company owns 10% or more of the corporation's stock.

Respondent Forjas Taurus, S.A. has no parent company and there is no publicly held company that owns 10% percent or more of the corporation. It is publicly traded.

Respondent Colt's Manufacturing Company, Inc. does not have a parent corporation. No publicly held company owns 10% or more of the company's stock.

Respondent Arms Technology, Inc. is a privately held corporation. No publicly held company owns 10% or more of the corporation's stock.

Respondent Sigarms, Inc. is a privately held corporation. No publicly held company owns 10% or more of the corporation's stock.

Respondent Phoenix Arms is a privately held company and has no parent corporation. No publicly held company owns 10% or more of the company's stock.

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Respondents Sturm, Ruger & Company, Inc., Glock, Inc., Beretta U.S.A. Corp., Smith & Wesson Corp., Taurus International Manufacturing, Inc., Forjas Taurus, S.A., Colt's Manufacturing Company, Inc., Arms Technology, Inc., Sigarms, Inc. and Phoenix Arms request that this Court deny the Petition for Certiorari ("Pet.") filed by Mayor Marc H. Morial and the City of New Orleans, seeking review of the decision of the Supreme Court of Louisiana entered in this case on April 3, 2001.

COUNTER-STATEMENT OF THE CASE

For over one hundred years, the State of Louisiana has regulated the design, possession, distribution and use of firearms pursuant to its police powers.[1] To ensure that these important matters were regulated in a centralized, uniform manner throughout the State of Louisiana, the Louisiana Legislature enacted La. R.S. 40:1796 in 1985, a statute reserving to the State, rather than its political subdivisions, the regulation of firearms.

On October 30, 1998, the City of New Orleans filed the instant lawsuit in an effort to accomplish through litigation regulatory goals it could not accomplish by ordinance. *Morial v. Smith & Wesson Corp.*, 785 So. 2d 1, 6, 16 (La. 2001) (Pet. App. at A-69-70, A-91). Specifically, New Orleans sought to force alterations in the federally and state regulated system of firearm manufacture and distribution. *Id.* at 16 (Pet. App. at A-91). The City of New Orleans attempted to justify its lawsuit by citing its status as a home

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[1] *See, e.g., State v. Smith*, 11 La. Ann. 633 (La. 1856); *State v. Amos*, 343 So. 2d 166, 168 (La. 1977); *State v. Sandifer*, 679 So. 2d 1324 (La. 1996).

rule municipality, pursuant to which it possesses certain rights under the Louisiana Constitution. *See, e.g., City of New Orleans v. Bd. of Comm'rs*, 640 So. 2d 237, 246 (La. 1994). However, this municipal independence is tempered by the Louisiana Constitution, Article VI, § 9(B), which provides that "[n]otwithstanding any provision of [the home rule powers] Article, the police power of the state shall never be abridged." *See also City of New Orleans v. Bd. of Directors, State Museum*, 739 So. 2d 748 (La. 1999).

Without question, the City's lawsuit here threatened the State of Louisiana's exercise of its police powers in maintaining uniform, centralized control over the regulation of firearms within the State. By virtue of the nature of the claims and the relief sought, this suit presented the very real likelihood of a geographic patchwork quilt of firearm regulation in Louisiana, with requirements for firearm design and distribution differing from one city and parish to another.

To protect the uniformity of firearm regulation across the State, a component of its police powers, the Louisiana Legislature passed and the Governor signed a bill enacting La. R.S. 40:1799 on June 11, 1999. As the Supreme Court of Louisiana explained in this case, uniformity of regulation was a major concern prompting the Louisiana Legislature to enact La. 40:1799:

> A scheme allowing several municipalities to file suits effectively attempting to regulate the firearms industry in different ways and in different degrees could conceivably threaten the public safety and welfare by resulting in haphazard and inconsistent rules governing firearms in Louisiana.

785 So. 2d at 16 (Pet. App. at A-90-91). La. R.S. 40:1799 provides that all political subdivisions in Louisiana are precluded and preempted from bringing lawsuits against firearm manufacturers based on the lawful design, manufacture, marketing or sale of firearms, expressly reserving the power to bring such suits to the State.[2] The statute applies both prospectively and retroactively to pending lawsuits.[3]

The Manufacturer Defendants filed peremptory exceptions of no right of action,[4] arguing that retroactive application of La. R.S. 40:1799 barred the City's suit. *Morial*, 785 So. 2d at 7-8 (Pet. App. at A-73). The trial court overruled Defendants' exceptions, finding that La. R.S. 40:1799 was not enacted pursuant to the state's police power, and therefore was unconstitutional. *Id.* On direct appeal, the Supreme Court of Louisiana reversed. *Id.* at 19 (Pet. App. at A-98). The court noted that under Louisiana law, a statute is enacted pursuant to the state's police power whenever "its operation tends in some degree to prevent an offense or evil

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[2] The City's Brief incorrectly states that Defendants "announced" plans to have La. R.S. 40:1799 enacted and lobbied the Governor and others to enact this bill. (Pet. at 1.) There is no such evidence in the record, and Defendants ask this Court to ignore the City's misstatement of fact.

[3] The Louisiana Legislature also enacted another statute related to firearms, La. R.S. 9:2800.60, but Defendants' appeal to the Supreme Court of Louisiana only concerned La. R.S. 40:1799 and thus that is the only statute at issue here, despite the City's repeated references to both statutes in its petition.

[4] A peremptory exception of no right of action is Louisiana's analogue to a motion to dismiss for lack of standing.

or otherwise to preserve public health, safety, welfare or morals," and held that it is "beyond question that this challenged statute was passed in the interest of the public as a whole and as an exercise of the state's police power." *Id.* at 15 (Pet. App. at A-89).[5]

The Supreme Court of Louisiana also rejected the City's argument that La. R.S. 40:1799 unfairly benefitted a single industry and therefore violated provisions of the Louisiana Constitution prohibiting special or local legislation, ruling that the statute is a "general" law enacted as part of the State's efforts to maintain centralized and uniform regulation of firearms, an issue of general concern to all Louisiana citizens.[6] 785 So. 2d at 18 (Pet. App. at A-95).

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[5] The City's Brief incorrectly states that the Supreme Court of Louisiana upheld the constitutionality of La. R.S. 40:1799 because it was "interpretive" of the preexisting statute La. R.S. 40:1796. (Pet. at 3.) The City has completely misstated the court's holding. The Supreme Court of Louisiana flatly rejected Defendants' argument in this regard; La. R.S. 40:1796, and the "interpretive" argument were thus not the basis of any part of the Supreme Court of Louisiana's ruling. *Morial*, 785 So. 2d at 17 n.11 (Pet. App. at A-92 n.11). Thus, it is curious that the City devotes several pages of its brief to combating an argument that the Supreme Court of Louisiana has already rejected. *See, e.g.*, Pet. at 7-9 (discussing irrelevant issues such as the meaning of the word "enact" in La. R.S. 40:796).

[6] The City continues to complain in its Petition for Writ of Certiorari that it believes that La. R.S. 40:1799 was merely passed to benefit a specific industry. However, the City does not and cannot ask this Court to review the Supreme Court of Louisiana's holding that this statute was not "special" legislation under the Louisiana Constitution, and there are no similar arguments to be made under the U.S. Constitution. This Court should ignore the

Instead of addressing these holdings, the City attempts to support its petition by focusing on ancillary issues: whether a state may retroactively reserve a right of action to itself, and in what circumstances a political subdivision may raise constitutional challenges against its state.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW DOES NOT PRESENT A CONFLICT

The decision of the Supreme Court of Louisiana represents the first ruling by a state's highest court regarding the constitutionality of state legislation that preempts political subdivisions of a state from bringing "haphazard" and "inconsistent" lawsuits against firearm manufacturers. *Morial*, 785 So. 2d at 16 (Pet. App. at A-91). It necessarily follows that the decision below does not conflict with the decisions of any other state's highest court, with the decision of any federal court of appeals, or with any decision of this Court. Indeed, Petitioners do not claim such a conflict, instead preferring to urge this Court to abandon what Petitioners call its "antique jurisprudence" in favor of "recent developments and expanding principles of local autonomy." (Pet. 6.)

It should go without saying that this unique, first-of-its-kind ruling is not an appropriate vehicle for this Court's consideration. Moreover, and notwithstanding this procedural impediment, it is doubtful that this case would be an

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City's arguments and inferences based on the concept of special and local legislation; this is not an issue that would properly be before this Court even if certiorari were granted.

appropriate vehicle for certiorari in any event. At every turn, Petitioners stress the critical nature, to their case, of the uniquely broad home-rule powers of the City of New Orleans, which Petitioners call "the broadest autonomy of any city in the country." (Pet. at 6; *see also* Pet. at 9 (referring to the City's "broad home rule powers"), Pet. at 9 n.1 (referring to the City's "especially strong home rule powers").) Thus, any decision by this Court would have to be limited to the peculiar facts of this case, and would have dubious application to other cases in light of what Petitioners call the City's uniquely "broad" and "strong" powers.

At bottom, then, Petitioners come to this Court seeking error correction. But, as this Court has long held, it "do[es] not grant a certiorari to review evidence and discuss particular facts," *United States v. Johnston*, 268 U.S. 220, 227 (1925), for its "certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases." *Watt v. Alaska*, 451 U.S. 259, 275 (1981) (Stevens, J., concurring). *See also Ponte v. Real*, 471 U.S. 491, 501-02 (1985) (Stevens, J., concurring) ("The merits of an isolated case have only an oblique relevance to the question whether a grant of certiorari is consistent with the sound administration of this Court's discretionary docket."). This case is a singularly inappropriate vehicle for consideration of either of the questions presented by the petition.

II. THE DECISION BELOW WAS CORRECT

The petition presents a panoply of constitutional objections to the decision below, none of which is appropriate for this Court's resolution on this record. Moreover, even though Petitioners essentially seek error correction from this Court, and even though error correction is not the function of

this Court's certiorari jurisdiction, there would be no basis for review here in any event because these issues were correctly decided by the court below.

A. The City Has No Constitutional Rights to Challenge the State Legislation

Few tenets of constitutional law are as well settled as the principle that cities cannot complain that their states have deprived them of constitutional rights.[7] *See, e.g., Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 660-61 (1819). In 1907, this Court stated that it was "long settled" that "[m]unicipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them." *Hunter v. City of Pittsburgh*, 207 U.S. 161, 177-78 (1907). Accordingly, the state, "at its pleasure, may modify or withdraw all such powers," and "may do as it will, unrestrained by any provision of the Constitution of the United States." *Id.* at 178-79. *Accord, City of Trenton v. State of New Jersey*, 262 U.S. 182 (1923); *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933) ("A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the U.S. Constitution which it may invoke in opposition to the will of its creator").

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[7] Interestingly, the City of New Orleans played a role in the early establishment of this rule of law. *See, e.g., City of New Orleans v. Clark*, 95 U.S. 644, 654 (1877); *City of New Orleans v. New Orleans Water Works Co.*, 142 U.S. 79, 89-91 (1891).

Vibrant for almost 200 years now, this rule continues to be applied today. *See, e.g., County of Suffolk, New York v. First Am. Real Estate Solutions*, __ F.3d __, 2001 WL 838368, at *6 (2d Cir. July 25, 2001); *Oakland County Bd. of County Road Comm'rs v. Michigan Property & Cas. Guar. Ass'n*, 575 N.W.2d 751, 759 (Mich. 1998); *City of New York v. State*, 631 N.Y.S.2d 553, 555 (N.Y. 1995); *Harris v. Angelina County, Tex.*, 31 F.3d 331, 339 (5th Cir. 1994); *San Francisco Taxpayers Ass'n v. Bd. of Supervisors*, 7 Cal. Rptr. 2d 245, 251 (Cal. 1992); *Housing Auth. of Kaw Tribe of Indians of Okla. v. City of Ponca City*, 952 F.2d 1183, 1188-89 (10th Cir. 1991); *City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375, 377 (Mo. 1991).

The single possible exception to this rule is not presented by the City's suit. In a few cases such as *Rogers v. Brockette*, 588 F.2d 1057 (5th Cir.), *cert. denied*, 444 U.S. 827 (1979) (and other cases cited in Petitioner's Brief at 11), courts have held that, even though a city cannot generally assert a constitutional claim against its state, a narrow exception exists when a city argues that a state statute violates a federal law, and therefore runs afoul of the Supremacy Clause. As one court explained:

> As Wright and Miller recognize, *Rogers* is most appropriately interpreted as standing for the proposition that municipalities may bring challenges under federal law to state statutes that regulate the relationship between the state and the municipality. In other words, municipalities may assert claims against the creating state under the Supremacy Clause, *but not under other substantive constitutional guarantees.*

Atlantic Coast Demolition & Recycling, Inc. v. Bd. of Chosen Freeholders, 893 F. Supp. 301, 315 (D.N.J. 1995) (citation omitted, emphasis added).

The City has not presented a Supremacy Clause challenge to La. R.S.40:1799. Instead, the City rests its argument on clauses such as the Equal Protection Clause, which courts have consistently held are unavailable to municipalities seeking to challenge state statutes. *Williams*, 289 U.S. at 40.

Failing to bring itself within the Supremacy Clause exception to the bar against constitutional challenges by cities against their states, the City of New Orleans attempts to fashion a wholly new exception based on its home rule powers, which it describes as giving it the "broadest autonomy of any city in the country." (Pet. at 6.) However described, New Orleans is still a city, not the fifty-first state. Accordingly, it is still a political subdivision of the State of Louisiana. "Although the City is not to be regarded as a creature of the *legislature* since its powers and functions are granted directly by the constitution, it is undeniably a creature of the *state*." *Morial*, 785 So. 2d at 13 n.10 (Pet. App. at A-84 n.10) (citation omitted; emphasis added). *Accord, City of Trenton*, 262 U.S. at 187.[8] As such, the City's home rule

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[8] This conclusion that the City of New Orleans is subordinate to the State of Louisiana is also supported by this Court's holding in *Community Communications Co., Inc. v. City of Boulder*, 455 U.S. 40 (1982):

> Ours is a "dual system of government" which has no place for sovereign cities. As this Court stated long ago, all sovereign authority "'within the geographical limits of the United States' resides

powers must give way to the State of Louisiana's exercise of its police powers. La. Const. Art. IV, § 9(B).[9]

Lacking a position grounded in the Supremacy Clause, the City of New Orleans cannot object to the State of Louisiana's exercise of its police powers nor can it ask this Court to review the Supreme Court of Louisiana's application of these *state* constitutional provisions. There is no conflict among the state courts or circuit courts of appeal on the applicable law. The City's Petition for a Writ of Certiorari should be rejected.

Additionally, even if the City could raise constitutional arguments against this statute, which it cannot, the constitutional arguments raised by the City also fail on substantive grounds. Specifically:

> either with the Government of the United States, or [with] the States of the Union. There exist within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies with limited legislative functions, but they are all derived from, or exist in, subordination to one of the other of these."

Id. at 53-54 (citations omitted), quoting *United States v. Kagama*, 118 U.S. 375 (1886).

[9] The City asserts that because it has the general right to sue, it must have had a specific right of action in this case. (Pet. at 6-7.) But just because the City is an entity with the power to sue and be sued, that does not mean that it will always have a right of action under Louisiana law. Every person in the State of Louisiana has the right to pay the filing fee and file a lawsuit, but they will not always have legally recognized rights of action under Louisiana law.

B. The Statute Is Not a Bill of Attainder

A bill of attainder is a legislative act that applies "either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial." *United States v. Lovett*, 328 U.S. 303, 135 (1946). *See also United States v. Brown*, 381 U.S. 437, 448-49 (1965). The City cannot possibly complain that La. R.S. 40:1799 is such a bill of attainder. First, the Bill of Attainder Clause only protects individuals, not political entities. *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966) ("courts have consistently regarded the Bill of Attainder Clause of Article I and the principle of the separation of powers only as protections for individual persons and private groups, those who are peculiarly vulnerable to non-judicial determinations of guilt"). Second, La. R.S. 40:1799 is not a "punishment." *See, e.g., Nixon v. Administrator of Gen. Serv.*, 433 U.S. 425, 475 (1977) (punishments include "imprisonment, banishment, and the punitive confiscation of property by the sovereign, [and] a legislative enactment barring designated individuals or groups from participation in specified employments or vocations"). Third, La. R.S. 40:1799 does not single out the City of New Orleans. *United States v. Brown*, 381 U.S. at 474. The statute speaks in general terms to prohibit *all* political subdivisions in Louisiana from suing firearms manufacturers for the lawful design, manufacture and distribution of firearms. In short, the City has no rights under the Bill of Attainder Clause, and even if it did, La. R.S. 40:1799 simply does not constitute a bill of attainder.

C. The Statute Does Not Violate the Equal Protection Clause

Because the City of New Orleans is not a member of any suspect class, the City can show a violation of the Equal Protection Clause only by demonstrating that La. R.S. 40:1799 is not rationally related to a conceivable and legitimate state end. *Nguyen v. Immig. & Naturalization Serv.*, 121 S. Ct. 2053, 2068 (2001); *City of New Orleans v. Dukes*, 427 U.S. 297, 303-04 (1976). This, the City cannot show. The Supreme Court of Louisiana concluded that as an exercise of the state's police power, La. R.S. 40:1799 was a reasonable law "enacted in the interest of public safety and welfare and pursuant to the police power of the state," 785 So. 2d at 15, and therefore by definition, was rationally related to a legitimate state end. The City has not shown otherwise.

D. The Statute Does Not Violate the Due Process Clause

The City possesses no due process rights violated by La. R.S. 40:1799. A city is not a "person" under the Due Process Clause and thus can receive no protection under that clause. *City of East St. Louis v. Circuit Court for Twentieth Judicial Circuit*, 986 F.2d 1142, 1144 (7th Cir. 1993). As one court noted:

> It is difficult to imagine how a municipality can be a "person" under the [Due Process Clause] if its progenitor, the state, cannot be. . . . [A] state cannot confer a constitutional status upon a municipality which the state does not itself enjoy, since the municipality performs the same function as the state.

City of Sault Ste. Marie, Mich. v. Andrus, 532 F. Supp. 157, 167 (D.D.C. 1980). *Accord, South Carolina v. Katzenbach*, 383 U.S. at 323-24.

E. The Statute Does Not Violate the Contract Clause

Although it argued the Contract Clause of Article I before the Supreme Court of Louisiana, the City mentions this clause only in passing here. Any Contract Clause claim by the City in this case would be frivolous. The City did not make claims against Defendants pursuant to any contract; it made products liability claims under tort law. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983). Moreover, even if the City had raised a contract claim, La. R.S. 40:1799 does not impair any contractual right. *Nieves v. Hess Oil Virgin Islands Corp.*, 819 F.2d 1237, 1243 (3d Cir.), *cert. denied*, 484 U.S. 963 (1987). To the contrary, La. R.S. 40:1799(B) specifically allows cities to bring breach of contract claims.[10]

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[10] La. R.S 40:1799(B) provides:

> This Section shall not prohibit the governing authority of a political subdivision or local or other governing authority of the state from bringing an action against a firearms or ammunition manufacturer, trade association, or dealer for breach of contract as to firearms or ammunition purchased by the political subdivision or local authority of the state.

* * *

As a home rule city, the City of New Orleans enjoys greater autonomy than other municipalities in Louisiana pursuant to Article VI of the Louisiana Constitution. But those powers must always yield to the State of Louisiana's exercise of its police powers, such as La. R.S. 40:1799. This was the holding of the Supreme Court of Louisiana under the Louisiana Constitution, and is the final word on this issue of Louisiana law.

The City's attempt to resurrect this case under the U.S. Constitution is groundless. The City of New Orleans is a political subdivision of the State of Louisiana. Under law that has been consistently applied by state and federal courts for almost 200 years, the City cannot argue that a law passed by the State of Louisiana has violated its constitutional rights. There is no disagreement among state or federal courts on this issue. Moreover, even if the City of New Orleans were not barred from attacking La. R.S. 40:1799 under the U.S. Constitution, the constitutional arguments that the City seeks to make fail for specific substantive reasons.

CONCLUSION

For these reasons, the petition should be denied.

Respectfully submitted,

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